

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Shawn Simmons,)	
)	C/A No.: 9:06-2126-MBS
Plaintiff,)	
)	
vs.)	
)	O R D E R
James Thomas Irvin, Jr.,)	
)	
Defendant.)	
_____)	

Plaintiff Shawn Simmons is an inmate at the Federal Correctional Institution in Bennettsville, South Carolina. Plaintiff, appearing pro se, claims that his former defense counsel “misrepresented” him in the underlying criminal case. Plaintiff seeks a refund of the fee he paid Defendant.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge George C. Kosko for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A and the Prison Litigation Reform Act of 1996. On September 5, 2006, the Magistrate Judge filed a Report and Recommendation in which he recommended that the case be summarily dismissed (1) for failure to state a claim of constitutional deprivation under Bivens v. Six Unknown Federal Narcotic Agents, 403 U.S. 388 (1971); and (2) because there is no diversity jurisdiction to allow the court to decide a contract dispute. Plaintiff filed no objections to the Report.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by

the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation and incorporates it herein by reference. The case is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

September 28, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.